



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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AFSCME Council 93, Local 3657  
Hillsborough County Corrections Employees

Complainant

v.

Hillsborough County Department of Corrections

Respondent

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Case No: G-0018-2

Decision No. 2005-092

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Council 93, Local 3657, Hillsborough County Corrections Employees (hereinafter "the Union") filed an unfair labor practice complaint on May 18, 2005 alleging that the Hillsborough County Department of Corrections (hereinafter "the County") committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i) by demanding to bargain over the terms and conditions of employment for certain positions. According to the Union, the parties have already reached a contract settlement for the positions in question and therefore the County's conduct in this regard constitutes an unlawful demand to mid-term bargain. The Union relates that as the result of a prior matter before this board, the Union and the County agreed to seek separate board certifications for two County bargaining units represented by the Union, specifically located at the Department of Corrections and the Sheriff's Department, and that the composition of the bargaining units would be in conformity with the recognition clauses previously negotiated within the respective collective bargaining agreements (CBA's).

The Union alleges that a successor Department of Corrections CBA (for the period July 1, 2002 to June 30, 2006) was signed on September 8, 2004. Thereafter, on November 15, 2004, this board certified an amended bargaining unit based upon the parties' joint modification petition. When the parties met on December 17, 2004, the Union alleges that the County's Chief Negotiator, then Superintendent James O'Mara, would not agree to recognize the bargained benefits for the newly certified positions, but instead indicated that the Board had ordered the County to bargain pursuant to its November 15, 2004 amended certification order. When the

parties met again on March 7, 2005, the Union states that the County's position, as expressed by its new Chief Negotiator, Thomas Flygare, remained the same. The instant improper labor practice followed.

As remedies the Union requests that the Board (1) find that the County has failed in its obligation to bargain in good faith and violated RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i); (2) order the County to make all affected employees whole as of July 1, 2004, (3) order the County to publicly post a copy of the Board's decision, (4) order the County to make the Union whole for its costs and expenses incurred in this matter, and (5) order any other necessary and appropriate relief.

The County filed its answer to the Union's unfair labor practice on June 14, 2005, wherein it denies any violation of RSA 273-A. The County admits that collective bargaining negotiations occurred between June 2001 and January 2004 for positions believed to be covered by the certification for the bargaining unit. It states that it became aware that certain positions were not covered by the bargaining unit certification through Board proceedings, related to a decertification petition, that occurred during the Spring of 2004. The County further acknowledges that a new unit certification issued following the filing of a modification petition. The County avers that upon receipt of the amended certification, it sought to negotiate consistent with the Board's notice of the Modification of the Certified Bargaining Unit and order associated therewith. Accordingly, the County requests that the PELRB (1) dismiss the Union's charges, (2) issue an order directing the Union to negotiate on behalf of the employees covered in the bargaining unit modification issued in November 2004, (3) award the County its attorney's fees and costs and (4) order whatever further relief it deems just and proper.

A pre-hearing conference was conducted before the undersigned hearing officer on June 30, 2005 at PELRB offices, Concord, New Hampshire.

#### PARTICIPATING REPRESENTATIVES

For the Union: James J. Dever, Esq. on behalf of Erin S. Goodwin, Esq.

For the County: Carolyn M. Kirby, Esq.

#### ISSUES PRESENTED FOR BOARD REVIEW

(1) Did the County commit an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and/or (i) by demanding to bargain over the terms and conditions of employment for the positions added to the certified bargaining unit pursuant to PELRB Decision No. 2004-177 and otherwise refusing to apply the terms of the July 1, 2002 to June 30, 2006 CBA to said positions?

(2) If so, what shall be the remedy?

## WITNESSES

For the Union:

1. CO Andrew Jubinville, Chapter Chair
2. Steven Lyons, AFSCME Staff Representative

For the County:

1. Superintendent James O'Mara, Jr.
2. Lt. James Vacca
3. Thomas Flygare, Esq.

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

## EXHIBITS

Joint Exhibits:

1. Unit Certification – PELRB Decision No. 2004-177 (Case No. G-0018).
2. Parties' collective bargaining agreement, July 1, 1995 to June 30, 2002.
3. Parties' collective bargaining agreement, July 1, 2002 to June 30, 2006.
4. November 30, 2004 letter from J. O'Mara, Jr. to S. Lyons
5. December 9, 2004 letter from S. Lyons to J. O'Mara, Jr.
6. June 24, 2004, Hillsborough County Legislative Delegation, Agenda/Roll Call
7. March 7, 2005 letter from S. Lyons to T. Flygare
8. March 7, 2005 letter from T. Flygare to S. Lyons.
9. Unit Certification – PELRB order dated December 7, 1976.
10. Modification Petition (AFSCME/Hillsborough County), filed October 21, 2004, re: PELRB Case No. G-0018.

For the Union

1. March 31, 2004 letter from S. Lyons to G. Wulf.
2. FAX sheet, dated April 6, 2004, from G. Wenger to S. Lyons.
3. June 24, 2004, Hillsborough County Legislative Delegation, meeting minutes.

For the County:

1. Modification Petition (Teamsters/Hillsborough County), filed September 27, 2004, re: PELRB Case No. G-0014.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

#### STIPULATED FACTS

During the course of the pre-hearing conference, the parties stipulated to the following facts:

1. Hillsborough County is a public employer under RSA 273-A.
2. AFSCME Council 93, Local 3657 is currently the certified exclusive representative of certain employees of the Hillsborough County Department of Corrections.
3. A Bargaining Unit Certification dated December 7, 1976 identified AFSCME Local 2715 as the certified representative for corrections officers at the Hillsborough County House of Corrections.
4. On September 8, 2004, AFSCME and the County signed a collective bargaining agreement.
5. The 1976 bargaining unit certification was modified on November 15, 2004 to change the identity of the certified bargaining unit representative to be AFSCME Local 3657 and to include the following positions in the unit: Account Clerk 1, Clerk Typist 1, Cook 1, Maintenance Worker 1, Nurse 1, Secretary 1 and Switchboard Operator/Receptionist.
6. Superintendent James O'Mara, Jr., on behalf of the County, forwarded a letter dated November 30, 2004 to AFSCME's staff representative for "expedited negotiating sessions..."

#### LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least five (5) days prior to the date of the evidentiary hearing.

DECISION AND ORDER

1. The parties' representatives shall continue to confer in order to reach additional agreed facts. The parties' representatives shall memorialize those additional facts, if any, upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
3. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an adjudicative hearing on the Union's complaint will be held on:

**JULY 28, 2005 @ 9:30 AM**

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.  
All parties are entitled to be represented by legal counsel at their own expense.

So ordered.

Signed this 14<sup>th</sup> day of July, 2005.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

Erin S. Goodwin, Esq.

Carolyn M. Kirby, Esq.